

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met his burden of proof to establish an emotional condition in the performance of duty, as alleged.

## **FACTUAL HISTORY**

On June 21, 2019<sup>3</sup> appellant, then a 51-year-old city carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on June 20, 2019 he developed an emotional condition while in the performance of duty. He explained that he was delivering mail when he saw some men running very close to him and almost immediately heard gun shots. Appellant indicated that he was “shocked” and started to panic so he immediately requested permission to return to his duty station. On the reverse side of the claim form, the employing establishment acknowledged that he was injured in the performance of duty, but controverted his claim, arguing that he was sent back out on another route to continue delivering mail that day without objection. Appellant stopped work on June 21, 2019 and returned to work on June 24, 2019.

In a June 21, 2019 medical report, Didier Mbenza, a physician assistant, evaluated appellant on June 20, 2019 for stress and anxiety after he was caught in possible cross fire while delivering mail. He reported experiencing nightmares and insomnia since the incident occurred. On evaluation, Mr. Mbenza diagnosed a panic disorder (episodic paroxysmal anxiety). In a separate medical note of even date, he advised that appellant should remain out of work for the remainder of his work shift.

In a June 24, 2019 medical note, Dr. Michael Holzer, Board-certified in family medicine, diagnosed an unspecified anxiety disorder and found that appellant’s functional limitations were of such severity that he could not perform his usual employment activities.

In a June 26, 2019 medical report, Dr. John Badell, Board-certified in occupational medicine, diagnosed an unspecified anxiety disorder in relation to appellant’s June 20, 2019 panic attack. He recommended that appellant continue his scheduled physician’s appointments.

In a development letter dated July 1, 2019, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion, OWCP afforded him 30 days to respond.

In a June 21, 2019 authorization for examination and/or treatment (Form CA-16) appellant’s supervisor indicated that appellant was “stress[ed] out” due to a June 20, 2019 injury. In Part B of the Form CA-16, Attending Physician’s Report, Mr. Mbenza indicated that appellant had possibly been caught in a cross fire on June 20, 2019. He checked a box marked “Yes” to indicate that appellant’s condition was caused or aggravated by his employment activity. In a duty status report (Form CA-17) of even date, Mr. Mbenza diagnosed a panic attack and advised that appellant could return to work the next day on June 22, 2019.

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<sup>3</sup> The Board notes that appellant dated his Form CA-1 July 21, 2019, however, this appears to be a typographical error.

In a June 21, 2019 form report, appellant indicated that he was involved in an incident on June 20, 2019 at approximately 2:00 p.m. He checked a box marked “Threat” to indicate that he was involved in an incident that was directed in a manner that caused him to know he was the target of a threat that placed him in reasonable fear for his safety. In an attached statement, appellant explained that on June 20, 2019 he got out of his vehicle to deliver mail and a group of men ran in his direction. He indicated that he heard gun shots at the same time. Appellant’s impression was that the group was running or escaping from somebody. He continued to deliver mail and noticed that there were several police officers at one of the addresses. Appellant then informed the officers of what he had witnessed. He attempted to continue delivering mail, but noted that he did not feel well and was in shock. Appellant then texted and called his supervisors and requested to suspend mail delivery for that route, as police helicopters were circling the area and appellant did not feel safe. The evening supervisor instructed appellant to return to the station and when appellant arrived at his duty station, he attempted to explain what happened and to request the rest of the day off, but he was assigned another delivery route. Upon completing this assigned route, appellant requested to file an incident report and the evening supervisor instructed him to file it the following morning. Afterward, he reported having trouble sleeping and experiencing nightmares. The following day, appellant took the day off and sought treatment.

In a June 22, 2019 medical report, Mr. Mbenza diagnosed unspecified insomnia subsequent to appellant’s panic attack. He also noted his history of post-traumatic stress disorder (PTSD) from a prior incident in which he was robbed. Mr. Mbenza advised that appellant rest and return for a follow-up appointment in two days.

In a June 25, 2019 diagnostic report, Dr. Jason Extein, a Board-certified diagnostic radiologist, performed a computerized tomography scan of abdomen and pelvis due to a new onset of constipation. He observed mild focalization of some distal small bowel loops, but no evidence of small bowel obstruction, as well as mild stool burden in the ascending colon.

In a July 26, 2019 response to OWCP’s development questionnaire, appellant indicated that the employment incident occurred when he was delivering mail while in the performance of duty. He attached a separate statement of even date where he again detailed the events of the June 20, 2019 employment incident. Appellant asserted that the incident occurred while he was in the performance of duty and caused him to experience panic and stress, reasoning that he was involved in the incident because he was very close to it and could have been wounded by a gun shot. He explained that he experienced anxiety and PTSD in the following days that made it “almost impossible” to sleep normally. Appellant noted that the stress and anxiety caused him to experience constipation and eventually had to visit the emergency room on June 25, 2019 as his condition continued.

In a July 29, 2019 medical report, Dr. Badell diagnosed an unspecified anxiety disorder and noted that appellant’s constipation had since improved since his visit to the emergency room. Appellant informed him that Dr. Badell had never experienced constipation before and attributed it to the anxiety he experienced following the June 20, 2019 employment incident.

By decision dated August 6, 2019, OWCP denied appellant’s claim for an employment-related emotional condition, finding that the evidence of record was insufficient to establish that

he actually experienced the employment incident alleged to have occurred. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. In an August 26, 2019 medical report, Dr. Bruce Kammerman, Board-certified in family medicine, recounted the events of June 20, 2019 in which appellant witnessed a crime while at work. He noted that appellant observed three men running from something and subsequently heard three to four gun shots as the men took off running down the street. Appellant informed Dr. Kammerman that the men made direct eye contact with him, but did not make any direct threat towards him. Dr. Kammerman diagnosed acute PTSD and opined that appellant's condition was a direct result of the June 20, 2019 employment incident.

On August 27, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In an August 7, 2019 medical note, Dr. Kammerman referred appellant to a psychologist.

In an August 26, 2019 psychotherapy intake note, Dr. Elena Coello-Jemmali, a Board-certified psychologist, evaluated appellant for stress and memories he encountered in relation to the June 20, 2019 employment incident. Appellant explained the events of the employment incident in which he noticed three men running in his direction before hearing three to four gun shots. Dr. Coello-Jemmali noted that the three men made direct eye contact with him, but did not threaten him. She then recounted the subsequent development of his medical conditions. Dr. Coello-Jemmali diagnosed adjustment disorder, other specified trauma and stress-related disorder, symptoms suggestive of PTSD, mild depression, and moderate anxiety.

In a September 6, 2019 medical report, Dr. Kammerman again recounted the events of the June 20, 2019 employment incident and diagnosed acute PTSD.

By decision dated October 31, 2019, an OWCP hearing representative conducted a preliminary review and found that the case was not in posture for a hearing. The hearing representative vacated the August 6, 2019 decision and remanded the case for further development of the factual evidence. On remand, the hearing representative directed OWCP to issue a development letter with the factual information provided by appellant to the employing establishment for review/comment by a knowledgeable supervisor.

In a November 7, 2019 development letter, OWCP provided the employing establishment a copy of appellant's June 21, 2019 statement and requested that it provide additional information, including comments from a knowledgeable supervisor, on the accuracy of his statements. It afforded the employing establishment 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated January 6, 2020, OWCP denied appellant's claim for an emotional condition, finding that the evidence of record was insufficient to establish that a medical condition arose during the course of employment and within the scope of compensable work factors.

OWCP continued to receive evidence. Appellant submitted a December 20, 2019 medical report in which Dr. Kammerman continued to evaluate appellant for his acute PTSD and again opined that it was directly related to the June 20, 2019 employment incident.

On February 5, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted multiple June 20, 2019 text messages and photographs in which he informed his supervisor that he heard gun shots a few meters from where he was delivering mail. He believed that the area was unsafe and requested that the mail delivery route be suspended.

Appellant also submitted a June 20, 2019 police incident report in which officers responded to a report of gun shots being fired in the area.

A telephonic hearing was held on May 27, 2020. Appellant testified about the events of the June 20, 2019 employment incident in which he asserted that he observed a group of men running close to him before hearing a gunshot and thinking he had been shot. He attempted to continue delivering mail until he noticed police in the area and decided to speak with the officers about the incident. Upon returning to his duty station, appellant requested to take the rest of the day off, however, his supervisors sent him out to deliver mail on another route instead. He testified that he was worried, scared, and anxious, but knew he had to follow his supervisor's instructions. Appellant then explained his subsequent feelings of concern after the incident, indicating that he continued working, even though he did not feel well, until he resigned from his position in September 2019.

By decision dated July 23, 2020, OWCP's hearing representative affirmed the January 6, 2020 decision.

### **LEGAL PRECEDENT**

To establish an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.<sup>4</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,<sup>5</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.<sup>6</sup> When disability results from an emotional reaction to regular or specially assigned work duties or

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<sup>4</sup> *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>5</sup> 28 ECAB 125 (1976).

<sup>6</sup> *G.M.*, Docket No. 17-1469 (issued April 2, 2018); *Robert W. Johns*, 51 ECAB 137 (1999).

a requirement imposed by the employment, the disability is deemed compensable.<sup>7</sup> A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>8</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee and are not covered under FECA.<sup>9</sup> Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has met his burden of proof to establish a compensable factor of employment.

Appellant has attributed his emotional condition to the performance of his regular work duties, *Cutler*<sup>11</sup> factors. He alleged that, while in the performance of his regular assigned duties, he witnessed a group of men run in his direction. The men made eye contact with appellant as they ran close by and he heard gun shots immediately thereafter.<sup>12</sup> Appellant's believed that the group was running or escaping from someone, and as he continued to deliver mail he noticed that there were several police officers at one of the addresses on his route. After giving a statement to the police officers on scene as to what he witnessed, he called and texted his supervisor and requested to immediately return to his duty station. The employing establishment acknowledged on the claim form that appellant was injured in the performance of duty. The Board has held that, where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability is compensable under FECA.<sup>13</sup> The Board finds that appellant was reasonably in fear of his safety while performing his letter carrier duties, as he was in close proximity to the running men, gunshots, and

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<sup>7</sup> A.C., Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, *supra* note 5.

<sup>8</sup> C.S. (K.S.), Docket No. 18-1733 (issued May 24, 2019).

<sup>9</sup> C.V., *supra* note 4.

<sup>10</sup> *Id.*

<sup>11</sup> *Supra* note 5.

<sup>12</sup> P.S., Docket No. 20-1192 (issued July 20, 2021); S.M., Docket No. 21-0197 (issued June 11, 2021); J.N., Docket No. 19-0215 (issued July 15, 2019); A.F., Docket No. 18-0295 (issued July 28, 2018).

<sup>13</sup> S.C., Docket No. 20-0603 (issued November 5, 2021); S.S., Docket No. 21-0184 (issued July 14, 2021); E.A., Docket No. 19-0582 (issued April 22, 2021); T.S., Docket No. 20-1194 (issued April 14, 2021); L.H., Docket No. 18-1217 (issued May 3, 2019); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, *supra* note 5.

police activity, and this all occurred as he was delivering mail.<sup>14</sup> The Board thus finds that appellant has established a compensable work factor.<sup>15</sup>

As OWCP found that there were no compensable employment factors, it did not analyze or develop the medical evidence. Accordingly, the Board will set aside OWCP's July 23, 2020 decision and remand the case for consideration of the medical evidence with regard to whether appellant has established an emotional condition in the performance of duty causally related to the compensable employment factor, *i.e.*, delivering mail while in close proximity to the running men, gunshots, and police activity.<sup>16</sup> After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>17</sup>

### **CONCLUSION**

The Board finds that appellant has met his burden of proof to establish a compensable factor of employment. The Board further finds that the case is not in posture for decision with regard to causal relationship between his diagnosed condition and the accepted compensable employment factor.

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<sup>14</sup> See *M.J.*, Docket No. 20-0953 (issued December 8, 2021). See also *T.D.*, Docket No. 20-0153 (issued October 8, 2021).

<sup>15</sup> *Id.*

<sup>16</sup> *S.C.*, *supra* note 13; *S.S.*, *supra* note 13.

<sup>17</sup> The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300(c); *F.K.*, Docket No. 21-0998 (issued December 29, 2021); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 23, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 11, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board